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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

Nos. 281-282

IN THE MATTER OF GRANADA APARTMENTS, INC.,
DEBTOR.

WEIGHTSTILL WOODS, COURT TRUSTEE,
Petitioner,
vs.

CITY NATIONAL BANK AND TRUST COMPANY OF
CHICAGO, AND OTHERS,
Respondents.

RESPONSE TO PETITIONER'S MOTION FOR LEAVE TO
DISPENSE WITH PRINTING THE ORIGINAL
TRANSCRIPT OF EVIDENCE.

VINCENT O'BRIEN,
JOHN MERRILL BAKER,
TRACY WILSON BUCKINGHAM,
Counsel for Respondents.

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RESPONSE TO PETITIONER'S MOTION FOR LEAVE TO DISPENSE WITH PRINTING THE ORIGINAL TRANSCRIPT OF EVIDENCE.

Petitioner asks the court to excuse the printing of four volumes of evidence and exhibits on the ground that they were not properly a part of the record in the Circuit Court of Appeals and were sent to this court merely as an original exhibit pursuant to Rule 10(4) of this court.

At pages 3 to 7, inclusive, of our answer to the petition for certiorari in Case No. 310 and at pages 5 to 10, inclusive, of our answer to the petition for certiorari in Case No. 179 we have shown at length that the four volumes were properly made a part of the record before the Circuit Court of Appeals not only in our appeals there docketed as Numbers 6986 and 7060, Numbers 281 and 282 here, but also in the Court Trustee's appeal there docketed as No.

7061, No. 310 here, and in our appeal there docketed as No. 7086, No. 179 here. We will not burden the court by repeating the matter there set forth except to call attention to the fact that, contrary to the Court Trustee's sworn statement the four volumes were marked filed in each of the aforementioned appeals, as will appear from inspection thereof; that the narrative statement of the evidence became a part of the record in the Circuit Court of Appeals in causes Nos. 6986 and 7060, Nos. 281 and 282 here, (but not in the other two appeals) by order of the Circuit Court of Appeals, and that it was not merely lodged with or handed to the clerk of that court as petitioner states; that contrary to petitioner's statement the four volumes were certified by the District Court judge and by the clerk as being a true and complete transcript of the proceedings in the case and that the four volumes were not sent to this court under Rule 10(4) as an original exhibit but, as an inspection of the Trustee's motion (Rec. 1001) and the order of the Circuit Court of Appeals in respect thereto (Rec. 1003) will disclose, as the original transcript of record sent to the Circuit Court of Appeals from the District Court by special order.

Rule 10 of this court relating to praecipes is not applicable to the record which shall accompany petitions for certiorari. On the contrary, Rule 38(1) says that a petition for certiorari shall be accompanied by a certified transcript of the record in the case, including the proceedings in the court to which the writ is asked to be directed. This we understand to mean the complete record which was before the Circuit Court of Appeals. And as the four volumes were a part of the record in the case in the Circuit Court of Appeals a copy of the complete record was not served on us within the ten days prescribed by Rules 38(3) and the petition should for that reason be dismissed.

However, we do not desire to stand on technicalities and have no objection to the court excusing the printing of the four volumes, as we agree with the petitioner that printing them at this time would serve no useful purpose. For of what value would it be to the court to have several thousand printed pages of testimony and exhibits before it when the petition for certiorari makes no reference thereto to support petitioner's contention that the findings of the District Court are adequately supported.

We do, however, strenuously object to the motion being granted on the ground that the four volumes were not properly a part of the record in the Circuit Court of Appeals or that they were sent there or here as an original exhibit, and suggest that if the printing is to be excused and the petition for certiorari is granted petitioner and respondents be given leave to refer to the testimony and exhibits contained in the four volumes provided they set forth in an appendix to their brief those parts of the testimony or exhibits to which they make reference.

We wish to note that the narrative statement of evidence which has been printed as a part of the record for purposes of the petition for certiorari in this case was never made part of the record in the cases pending here on petitions for certiorari as Nos. 179 and 310. However, as above noted the four volumes were made a part of the record in each of those cases and have never been printed, nor has the failure to print ever been excused.

Respectfully submitted,

VINCENT O'BRIEN,

JOHN MERRILL BAKER,

TRACY WILSON BUCKINGHAM,

Counsel for Respondents.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

JOHN MERRILL BAKER, being first duly sworn, states that he has prepared the foregoing response and brief in opposition to the motion of petitioner; that he is familiar with the records in the several courts and that the statements made in the foregoing response and brief are true to the best of his knowledge and belief.

JOHN MERRILL BAKER.

Subscribed and sworn to before me this 25th day of September, 1940.

(NOTARIAL SEAL)

EDITH JOHNSON,
Notary Public.

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